

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 102 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA****HONOURABLE MS.JUSTICE H.N.DEVANI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

COMMISSIONER OF INCOME TAX - Appellant(s)**Versus****DHALL ENTERPRISES & ENGINEERS PVT.LTD. - Opponent(s)**

=====

Appearance :

MR TANVISH U BHATT for Appellant(s) : 1,

MR RK PATEL for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**and****HONOURABLE MS.JUSTICE H.N.DEVANI****Date : 07/12/2005****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1. At the time of admission on 16-4-2003, the following question had been formulated by this Court.

“Whether the Appellate Tribunal was right in law and on facts in holding that the third proviso to section 32 (1) of the Income Tax Act, 1961 would not be applicable in respect of the plant and machinery which cost below Rs.5,000=00 since such assets are covered specifically under the first proviso, and that the entire cost is to be allowed by way of deduction ?”

2. In a similar matter involving identical issue being Tax Appeal No.166 of 2005, on 03/04-10-2005 this Court passed the following order .

“1. The following question has been proposed by the appellant-revenue :

“Whether the Appellate Tribunal was right in law and on facts in holding that the third proviso to section 32 (1) of the Income Tax Act, 1961 would not be applicable in respect of the plant and machinery which cost below Rs.5,000=00 since such assets are covered specifically under the first

proviso, and that the entire cost is to be allowed by way of deduction ?”

2.The Assessment Year is 1995-96. It is an accepted fact that the assessee purchased crates which are held to be plant. It is also an accepted fact that value of each crate is less than Rs.5,000/- Under first proviso to Section 32 (1) (ii) of the Act actual cost of a plant or machinery is to be allowed as a deduction where the actual cost does not exceed five thousand rupees. In these circumstances, there is no question of invoking the third proviso which talks of restructuring the deduction to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii), as the case may be.

3.Therefore, on a plain reading of the provision it is apparent that there is no infirmity in the impugned order of the Tribunal, considering the undisputed facts available on record.

4.Therefore, in absence of any substantial question of law, the appeal is dismissed.

DATED : 04/10/2005

5. Heard Mr. M.R.Bhatt for the appellant.

6. After the aforesaid order was made, but before it could be signed it has been brought to the notice of the Court that similar issue had come up before this Court in case of Commissioner of Income-tax Vs. Dhall Enterprises & Engineers Private Limited, Tax Appeal No.102 of 2003 and by order dated 16th April, 2003 the appeal has been admitted.

7. In the light of the aforesaid position, Tax Appeal No.102 of 2003 to be listed for final hearing on 19th October, 2005 along with this Tax Appeal.

Hence, this Tax Appeal is taken up for final hearing and disposal today.

3. Mr. T.U.Bhatt, learned Standing Counsel appearing on behalf of the appellant submitted that Section 32 (1) of the Income Tax Act, 1961 (the Act) requires that a deduction in respect of depreciation of buildings, machinery, plant or furniture is to be

granted. That the concept of depreciation in the circumstances means wear and tear of the asset upon its user. That the said sub Section further requires that the assets in question should not only be owned by the assessee, but should also be used for the purposes of business or profession. Thereafter, referring to the first proviso it was submitted that even therein legislature has used the phrase "put to use" showing legislative intent of use of the assets being a necessity. According to him, similarly under third proviso, the words "put to use" are preceded by the words "provided also " and "acquired" which would indicate that the third proviso had also to be brought into play even in case where the assets satisfied the condition prescribed under the first proviso. In support of the proposition, he placed emphasis on the term "also" appearing in the third proviso. Therefore, according to him, the third proviso had to be given effect

to even in cases where the assessee was being granted a deduction under the first proviso and the Tribunal had committed error in reading the provisions so as to mean that when the first proviso came into play, there was no requirement to apply the third proviso. He therefore, urged that the question referred to the Court has to be answered in favour of the revenue considering the scheme of the Act which unfolded on reading provisions of Section 32 (1), the first proviso and the third proviso together.

4. As against that, Mr. R.K. Patel, learned advocate appearing on behalf of the respondent-assessee, submitted that the asset in question did not have any written down value, and therefore, there was no question of considering the assets to be forming part of block of assets. That only in such circumstances, the third proviso would get invoked and hence there was no error committed by the Tribunal. He also

invited attention to the amendment made by the Finance Act, 1995, whereby the first proviso came to be omitted w.e.f.1st April, 1996 i.e. Assessment year 1996-97 and subsequent years. According to him, this goes to indicate that the benefit under the first proviso had to be granted up to and for assessment year 1995-96.

5.The controversy between the parties pertains to allowability of deduction of a sum of Rs.10,00,000/= (Rupees Ten Lacs) which was the purchase price of gas cylinders. The Assessing Officer granted deduction of only Rs.5,00,000/= (Rupees Five Lacs) by invoking third proviso. The Commissioner (Appeals) accepted the claim of the assessee on the basis of the first proviso and the Tribunal concurred with the view expressed by the Commissioner (Appeals) in its impugned order dated 15-2-2002.

6.Section 32 (1) of the Act lays down as to what deduction should be granted in respect of depreciation and under clause (ii) of sub

Section (1) of Section 32 of the Act, the deduction is, in the case of any block of assets, such percentage on the written down value thereof as may be prescribed. Thereafter, the first proviso appears which stipulates that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost of such machinery or plant shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession. This proviso was originally inserted by the Finance Act, 1966 and the value of the actual cost of machinery or plant was fixed at Rs.750/=(Rupees Seven Hundred Fifty Only) at that point of time. Subsequently, by Finance Act, 1983, the said ceiling has been increased to Rs.5,000/= (Rupees Five Thousand Only).

7. On 21st July, 1966, the Central Board of Direct Taxes, issued departmental circular No.4-P

(LXXVI-61) OF 1966 and paragraph 54 of the said circular reads as under :

“In order to simplify the calculation and accounting of depreciation allowance in respect of machinery or plant of a small cost, the Finance Act, 1966, has added a proviso (now the first proviso) to section 32 (1) (ii) of the Income-tax Act to the effect that where the actual cost of machinery or plant does not exceed Rs.750/- the whole of such cost will be allowed to be deducted as depreciation allowance in respect of the previous year in which such machinery or plant is first put to use by the taxpayer for the purpose of his business or profession. ”.

8.In 1983, the amendment carried out by the Finance Act, 1983, came to be explained by departmental circular No.372, dated 8th December, 1983 and paragraph 22.2 of the said circular reads as under :

“Under the first proviso to section 32 (1), the whole of the actual cost of any machinery or plant is deducted in the computation of taxable profits in case

where the actual cost of such machinery or plant does not exceed Rs.750. The Finance Act, 1983, has amended this proviso and increased the monetary ceiling of Rs.750 to Rs.5,000."

9.As against that, second and third proviso came to be inserted in the statute by Finance (No.2) Act, 1991. The scope and effect of the amendment was explained by departmental circular No. 621, dated 19th December, 1991 and paragraph Nos.17.1 and 17.2 read as under :

"17.1. Further, under the existing provisions of section 32 read with rule 5 of the Income-tax Rules, 1962, full depreciation is allowed on an asset even if it has been acquired by the assessee towards the end of the relevant previous year and has been used for one day during that previous year. This results in excessive allowance of depreciation in the year in which the asset is first put to use thereby depleting the taxable profits of that year by an amount

which bears no relationship to the user of that asset for earning for profits of that year. Section 32 has, therefore, been amended to provide that, where in a previous year an asset is acquired and put to use for the purposes of business or profession for less than 180 days, depreciation thereon shall be allowed at 50 % of the depreciation allowable according to the percentage prescribed in respect of the block of assets comprising such asset. Furthermore, no depreciation will be allowed in respect of any plant or machinery the cost of which gets amortised in one or more years, under section 42 of the Income-tax Act relating to the special provision for deduction in respect of business of prospecting for mineral oil.

17.2. These amendments will take effect from 1st April, 1992, and will, accordingly, apply in relation to the assessment year 1992-93 and subsequent years."

10. Thus, it is apparent that the legislative intent in introducing the first proviso was to ensure that a taxpayer is not put to hassle of detailed calculation and accounting of depreciation allowance in respect of machinery or plant having small cost. As against that, the legislative intent in introducing the third proviso was to obviate the practice adopted by the taxpayers to claim full depreciation on an asset even if the asset is acquired towards the end of the year and used for only one day during the previous year resulting in excessive allowance of depreciation in the year in which the asset is first put to use, thereby depleting the taxable profits of that year by an amount which bears no relationship to the user of that asset for earning that income.

11. The scheme therefore that unfolds is that in cases of assets whose value does not exceed the prescribed monetary ceiling, neither the taxpayer nor the Assessing Authority must be

called upon to undertake an elaborate exercise to compute the depreciation allowance by entering into detailed calculation followed by accounting entries from year to year. Therefore, to project the third proviso as overriding the first proviso is not warranted by the scheme of the Act or the legislative intent.

12. It is settled position in law that proviso is normally used as a legislative tool to carve out an exception from the main provision which precedes the proviso. The first proviso makes it clear that in case of the machinery or plant whose actual cost does not exceed the specific monetary ceiling, such asset would not enter the block of assets and hence, there would be no occasion to work out such percentage of the written down value/actual cost. If the view canvassed by the revenue is accepted, this would go against the legislative intent.

13. There is one more reason. The third proviso

itself requires to restrict the depreciation allowance at 50 % of the amount calculated at the percentage prescribed under clause (ii) of Section (1) of Section 32 of the Act. As already noticed, the asset does not enter the block of assets and hence, there is no question of working out the prescribed percentage. Therefore, on this count also the third proviso cannot be invoked and applied because it does not talk of restricting the value at 50 % of the actual cost.

14. In the circumstances, in absence of any infirmity in the impugned order of the Tribunal, the question has to be answered in the affirmative namely, in case of plant and machinery whose cost does not exceed Rs.5,000/-, the third proviso to Section 32 (1) (ii) of the Act would not be applicable since such assets are covered specifically under the first proviso to the said Section and entire actual cost has to be allowed as a deduction,

subject to the assessee fulfilling all other requisite conditions. The question is accordingly answered in the affirmative, i.e. In favour of the assessee and against the revenue.

15.The appeal is accordingly dismissed with no order as to costs.

(D.A.MEHTA, J.) (H.N.DEVANI, J.)

*mithabhai